

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
DEARBORN RIVER BASIN (41U)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Barbara McDonough

**CASE 41U-0060-R-2023**  
41U 28046-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

### FINDINGS OF FACT

1. Claimant Barbara McDonough was ordered to meet with a DNRC employee to address the following issue remark decreed on irrigation claim 41U 28046-00:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. On March 24, 2023, DNRC Water Resource Specialist Jason Larsen filed a Memorandum stating that he was contacted by Rob McDonough on behalf of his mother, Claimant Barbara McDonough. (Doc.<sup>1</sup> 4.00) According to Mr. Larson's conversation with Mr. McDonough:

Rob stated that it had been decades since there had been water flowing in the ditches, which were originally only about 12 inches deep according to the original claim, and that the ditches had partially filled in over the years.

According to Rob, he wasn't sure if there was ever a headgate at the point of diversion and was certain there is no headgate there now.

After consulting with Mr. McDonough, Mr. Larsen recommended changing the point of diversion legal land description to the SENWNE of Section 32.

3. Based on Rob McDonough's statements, it appears claim 41U 28046-00 has been abandoned.

4. To determine if Claimant Barbara McDonough agreed claim 41U 28046-00 was abandoned, an Order Setting Show Cause Filing Deadline was issued on March 27, 2023. (Doc. 5.00) The Order set a deadline for Claimant Barbara McDonough to show cause why claim 41U 28046-00 should not be dismissed as abandoned. The Order indicated that if nothing were filed by the April 27, 2023 deadline, this Water Master would conclude that Claimant Barbara McDonough agreed claim 41U 28046-00 should be dismissed as abandoned. The following language was included in the Order:

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

3. Existing water rights are subject to the law of abandonment. A long period of non-use raises a rebuttable presumption of abandonment. “Once an appropriator abandons a water right, the right ceases.” *Holmstrom Land Co. v. Meagher Cnty. Newlan Creek Water Dist.*, 185 Mont. 409, 423, 605 P.2d 1060, 1068 (1979). In *Holmstrom* there was at least a 30-year period of non-use, raising the presumption of abandonment. The claimant did not offer information or evidence to rebut the presumption of abandonment.

4. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that claim 41U 28046-00 should be dismissed as abandoned.

### RECOMMENDATION

1. Claim 41U 28046-00 should be dismissed as abandoned.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Barbara McDonough  
5835 Lewis & Clark Rd.  
Wolf Creek, MT 59648-8652

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**DEARBORN RIVER**  
**BASIN 41U**

**Water Right Number:** 41U 28046-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** DISMISSED

**Owners:** BARBARA MCDONOUGH  
5835 LEWIS AND CLARK RD  
WOLF CREEK, MT 59648 8652

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** HARDGROVE CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.